

**IN THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

ELIZABETH HORTON,

PLAINTIFF,

vs.

DON WILLIAMS, etc, et. al.

DEFENDANTS.

2006 AUG -9 P 12:13

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CASE NO: 3:06CV526-DRB

RESPONSE TO MOTION TO DISMISS OF DEFENDANT DON WILLIAMS

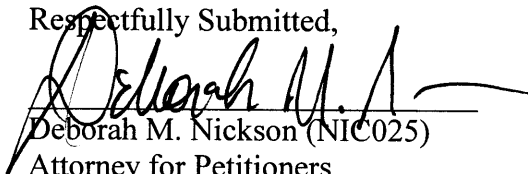
Elizabeth Horton, Plaintiff, by and through her undersigned attorney, hereby responds to Motion to Dismiss of Defendant Don Williams saying that the Motion should be denied because of the following:

Defendant Motion to Dismiss should be denied because he has failed to show this court that no relief could be granted under any set of facts that could be proved consistent with the allegations raised in the complaint. *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S.Ct. 2229, 81 L.Ed.2d 59 (1984). The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). The complaint may be dismissed "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon*, 467 U.S. at 73. In addition, the Supreme Court has made abundantly clear, Federal Rules of Civil Procedure, Rule 8(a) "do [es] not require a claimant to set out in detail the facts upon which he bases his claim." *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 168, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993)(internal quotes omitted). The simplified notice pleading standard of Rule 8(a) (2)] relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims. *Swierkiewicz*

v. Sorema N.A., 534 U.S. 506, 512, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002). Finally, the deficiencies if any in the complaint can be cured by allowing plaintiff to amend her complaint.

Based on the above defendant's Motion to Dismiss should be denied.

Respectfully Submitted,



Deborah M. Nickson (NIC025)

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CERTIFICATE OF SERVICE

I hereby certify that On August 7, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to the following:

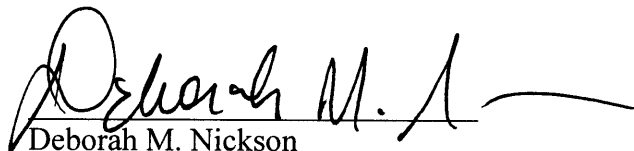
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